IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

ITA No. 160 of 2007

Date of Decision: 5.11.2007

The Commissioner of Income Tax, Karnal

…Appellant

Versus

Vijay Arora

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Yogesh Putney, Advocate,

for the appellant-revenue.

M.M. KUMAR JUDGE, J.

This is revenue's appeal filed under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act'), challenging order dated 23.8.2006, passed by the Income Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal'), in I.T.A. No. 1028/DEL/2006, in respect of assessment year 2002-2003. The appellant-revenue has claimed that following substantial questions of law would arise for our determination:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the order of the CIT (Appeals) directing the Assessing Officer to allow deduction

under Section 80IB of the Income-tax Act, 1961, on the amount of duty draw back received by the assessee which cannot be termed as income "derived from" an industrial undertaking as held by Hon'ble the Supreme Court in the case of CIT v. Sterling Foods, (1999) 237 ITR 579?

2. Whether on the facts and in the circumstances of the case the Tribunal is right in law in allowing deduction under Section 80IB of the Income-tax Act, 1961, on the total business profits which includes duty draw back/export incentives without considering the provisions of Section 80IB of the Act under which the deduction is allowable only from the income derived from the industrial undertaking having direct nexus with the activity of industrial undertaking?

After hearing learned counsel for the appellant-revenue and perusing various orders placed on record, we find that the matter is no longer *res integra* and has been duly considered by a Division bench judgment of this Court in the case of **M/s Liberty India v. Commissioner of Income Tax, Karnal (ITA No. 590 of 2005, decided on 22.9.2006)**. While placing reliance on a judgment of Hon'ble the Supreme Court in the case of **CIT v. Sterling Foods, (1999) 237 ITR 579**, the Division Bench has held that the income earned by the assessee from duty draw back cannot be held to be the

income 'derived from' specified business within the meaning of Section 80IB(1) of the Act. Matters involving similar questions of law have already been decided by this Court in ITA Nos. 97, 99, 100, 102, 103 and 174 of 2007.

We are also of the view that once Hon'ble the Supreme Court in Sterling Food's case (supra) has rendered the judgment then the questions cannot be reopened. The appeal filed by the revenue is, therefore, liable to be accepted and the questions raised deserves to be answered in favour of the revenue.

In view of above, the appeal is allowed and the questions of law raised in the instant appeal are answered in favour of the revenue and against the assessee.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

November 5, 2007
Pkapoor